REMARKS

Applicant thanks the Examiner for a thorough examination of the present application, but respectfully requests reconsideration of the present application in view of the reasons that follow. Claims 1-61 are pending in this application.

In light of the Examiner's consideration of Applicant's arguments filed on April 23, 2008, new grounds of rejection were asserted in the outstanding Office Action of July 29, 2008. In the outstanding Office Action, claims 1-5, 17-22, 32-37, 46-50, and 60-61 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,143,132 to Klien et al. (Klien) in view of U.S. Patent No. 6,055,543 to Christensen et al. (Christensen). Applicant respectfully traverses this rejection for at least the reasons set forth below.

In Applicant's arguments filed on April 23, 2008, Applicant explained that Klien does not read on independent claims 1, 17, 19, 32, 34, 46, and 60 because Klien is directed to transmitting metadata and file data *separately* via a first channel and a second channel. In other words, the metadata and the file data in Klien are never transmitted on the same channel or within the same file. As such, Klien did not properly read on the claimed transmission of a formatted data file having metadata and content. As indicated on page 2 of the outstanding Office Action, the Examiner found these arguments to be persuasive. However, in the current Office Action, the Examiner attempted to cure the deficiencies associated with Klien by combining Klien with Christensen. (*See*, page 3 of Office Action). Applicant respectfully disagrees with the Examiner's position.

With regard to independent claims 1, 17, 19, 32, 34, 46, and 60, the Examiner asserted that, since Christensen illustrated metadata and file data located within a single file (*see, e.g.*, Figure 5), it would have been "obvious to modify the teachings of Klien with the teachings of Christensen in order to make the data transmission process of a system more efficient by transmitting a single file having both the metadata and content together instead of transmitting the metadata and content separately." (*See*, page 3 of Office Action). Applicant respectfully disagrees with the Examiner's position. In particular, Applicant submits that Klien (1) teaches

away from a single file having both the metadata and content transmitted on a single channel, (2) one of ordinary skill in the art at the time of the invention would not have been motivated to make such a combination, and (3) the asserted combination does not teach all the claim elements when considered in combination.

Applicant respectfully submits that Klien teaches away from transmitting a single file having both the metadata and content on a single channel because, throughout the entire reference, Klien makes it clear that the teachings are directed to transmitting metadata via a first channel and transmitting file data via a second channel. For example, Klien states:

> The datacast module 102, operating on the server 100 has control over <u>two communication channels</u>, or connection ports, for transmitting data, namely a first communication channel 110 and a second communication channel 112. <u>The first communication channel 110 is used to transmit metadata, while the second communication channel is used to transmit file data</u>. Each channel 110 and 112 is preferably configured to the network via its own port settings and according to specific connection characteristics.

(Col. 7, lines 9-17; emphasis added). Similarly, Klien notes:

> Only a single connection is required to transmit the file data as opposed to multiple connections. Similarly, only a single connection is required to transmit the metadata. Note that the file data and metadata may be transmitted simultaneously, or at different times, <u>given that they are transmitted over different channels</u>.

(Col. 7, lines 3- 8; emphasis added).

Accordingly, Klien clearly intends for metadata and file data to be transmitted in separate files via a separate channels. Figures 5, 6(a), and 6(b) in Klien further evidence this point by illustrating Klien's intended use of a first channel (metadata) and second channel (file data). Thus, Applicant submits that modifying Klien in the manner asserted by the Examiner would contradict the express teachings of Klien inasmuch as Klien teaches away from the modification asserted by the Examiner.

Moreover, Applicant submits that the proposed combination would change the principle of operation and/or make the Klein reference unsatisfactory for its intended purpose. As discussed in the MPEP § 2143.01 (V): "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." *In re Gordon*, 733 F.2d 900, 221, USPQ 1125 (Fed. Cir. 1984). Additionally, as discussed in MPEP § 2143.01 (VI): "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). (Emphasis in original). As discussed above, Klien's principle of operation and intended use are undoubtedly directed to a dual-channel arrangement. Modifying such an arrangement from a dual-channel arrangement to a single-channel arrangement (as proposed by the Examiner) would depart from Klien's intended use and also change the principle of Klien's invention. As such, Applicant submits that one of ordinary skill in the art at the time of the invention would not have been motivated to make such a combination.

Furthermore, Applicant disagrees with the Examiner's reasoning for combining the teachings of Klien and Christensen. As discussed above, the Examiner asserted that the combination would have been obvious "in order to make the data transmission process of a system more efficient by transmitting a single file having both the metadata and content together instead of transmitting the metadata and content separately." (*See*, page 3 of Office Action). Since such motivation is not supported by the text of either reference, Applicant assumes that the motivation is based on the knowledge of one of ordinary skill in the art. However, as discussed below, one of ordinary skill in the art would not make such a combination.

If Klein and Christensen were combined in the manner asserted by the Examiner, the resulting combination would be a single file including both metadata and file data, wherein the single file would be transmitted over a single channel in the cyclical pattern discussed in Klien. (*See, e.g.*, col. 2, lines 30-33, col. 3 lines 3-8, and col. 6, lines 20-24). In such a configuration, if

a receiver were to miss a small portion of metadata in the single file (containing both metadata and file data), the receiver would be forced have to listen/receive the entire next single file (containing both metadata and file data) transmitted in the next cycle. In other words, if a receiver missed any data is the Examiner's proposed combination, the receiver would have to receive *both* the metadata and file data since they are transmitted only via a single file. This is extremely inefficient because if the receiver only wants to obtain small portion of metadata, the receiver is forced to receive the entire file data – which generally comprises a much larger amount of data. Thus, modifying Klien in the manner proposed by the Examiner would actually make the teaching of Klien *less efficient* because the original teachings of Klien teach that, if a receiver in Klien misses a small portion of metadata, the receiver only has to listed to the channel cycling metadata. (*See, e.g.*, col. 3, lines 3-8 and 23-37). Therefore, a receiver in the original teaching of Klein is able to obtain a missing portion of metadata in a relatively efficient, simple, and resource-friendly manner. If the teachings of Klien were modified in the manner proposed by the Examiner, the efficiency benefits gained by transmitting the metadata and file data separately would be lost. Accordingly, Applicant submits that one of ordinary skill in the art at the time of the invention would not have been motivated to modify Klien in the manner asserted by the Examiner.

Finally, Applicant also submits that, if Klien were modified in the manner asserted by the Examiner, the resulting combination would be unable to retransmit only the metadata separate from the formatted data file (which comprises metadata and content), as recited in claims 1, 19, 34, and 46. In addition, the resulting combination would be unable to transmit only the metadata earlier than the formatted data file, as required by claims 17, 32, and 60. This is because the resulting combination would only be able to transmit single files that included both meta data and content (*see, e.g.*, Figure 5 in Christensen), and would not be able to transmit only the metadata *separate* from the single file comprising both meta data and content.

For at least the above reasons, Applicant respectfully requests withdrawal of the rejection of independent claims 1, 17, 19, 32, 34, 46, and 60.

Claims 11, 13, 14, 26, 28, 29, 41, 43, 44, 54, 56, and 57 were rejected under 35 U.S.C. §
103(a) as being unpatentable over Klien in view of Christensen and further in view of U.S.
Patent No. 7,139,811 to Lev Ran et al. (Lev Ran). Applicant respectfully traverses the rejection
for at least the reasons set forth below.[1]

First, Applicant notes that the above set of rejections is based on the combination of
Klien and Christensen. As discussed in great detail above, the combination of Klien and
Christensen is improper. Therefore, Applicant submits that these claims are also allowable for at
least the reasons discussed above, and, Applicant hereby incorporates its arguments from above.

In addition, Applicant submits that the combination of Klien, Christensen, and Lev Ran,
considered alone and in combination, fails to teach or suggest "using FEC to allocate more
redundancy to the metadata than is allocated to the content," as recited in independent claims 13
and similarly recited in independent claims 28, 43, and 56. The Examiner correctly recognized
that such a feature is not discussed in either Klien or Christensen. However, the Examiner
asserted that Lev Ran cured such deficiencies. (*See*, page 10 of Office Action). Applicant
respectfully disagrees with the Examiner's position.

In rejecting claims 28, 43, and 56, the Examiner asserted that Lev Ran taught the feature
of "using FEC to allocate more redundancy to the metadata than is allocated to the content" at
column 52, lines 58-63 thereof. In response to this rejection, Applicant has examined the
disclosure of Lev Ran and cannot find support for such a assertion. Lev Ran merely states:

> Adaptation layer 45 preferably uses IP multicasting in order to
> more efficiently perform large-scale replication. Reliable
> multicasting mechanisms are used, preferably including forward

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[1] Applicant notes that the Examiner has asserted the same reasoning for the rejection of these claims as
asserted in the previous Office Action. Although the current rejection also includes the Christensen reference, the
portion of the rejection related to forward error correction (FEC) is based on the same reasoning provided in the
previous Office Action. In Applicant's response to the previous Office Action, Applicant explained why including
a reference which broadly states that FEC is known in the art is not the same as the claim element recited.
Accordingly, if the Examiner wishes to present the same reasoning in a future Office Action, Applicant respectfully
requests the Examiner to "take note of Applicant's argument and answer the substance of it," as required by MPEP
§ 707.07(f).

> error-correction techniques, as are known in the art, in order to
> save retransmission bandwidth and delays.

(Col. 52, lines 58-63; emphasis added). As such, Lev Ran merely teaches that FEC is known in the art and can be used to reduce delays and save retransmission bandwidth. However, there is no discussion or suggestion relating to allocating *more redundancy* to metadata than is allocated to the content. More specifically, there is no teaching related to the proportion of redundancy transmission with respect to metadata and content. As such, Applicant submits that the rejection of independent claims 13, 28, 43, and 56 is improper and should be withdrawn.

With regard to claims 14, 29, 44, and 57, each of these claims requires that "FEC is used for only metadata." In rejecting these claims, the Examiner cited the same portion of Lev Ran quoted above, and broadly asserted that "[i]t would have been obvious to a person having ordinary skill in the art at the time of the invention to specifically modify the combined teaching of Klien and Christensen with the teachings of Lev Ran in order to fix errors and save retransmission bandwidth and delays." (*See*, page 11 of Office Action). Applicant respectfully disagrees. In particular, Applicant submits that there is no reference of record that teaches or even hints at using FEC only for metadata. The cited text merely states that FEC is known in the art. However, even if FEC is known in the art, there is no indication that it would have been obvious to modify Klien and Christensen to use FEC *only* for metadata. As such, Applicant submits that the rejection of independent claims 14, 29, 44, and 57 is improper and should be withdrawn.

Claims 15, 16, 30, 31, 45, 58, and 59 were rejected under 35 U.S.C. §103(a) as being unpatentable over Klien in view of Christensen in view of U.S. Patent No. 7,296,205 to Curcio et al. (Curcio) and further in view of U.S. Patent No. 7,243,365 to Rahman (Rahman).[2]

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[2] Applicant notes that the rejection mistakenly indicates that claims 12, 27, 42, and 55 are being rejected. However, since the body of the rejection addresses claims 15, 16, 30, 31, 45, 58, and 59, Applicant is assuming that this was a typographical error and the Examiner intended to reject claims 15, 16, 30, 31, 45, 58, and 59.

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With regard to claims 15 and 58, Applicant notes that this rejection is based in part on the combination of Klien and Christensen. As discussed in detail above, this combination is improper, and Applicant therefore submits that these claims are allowable for at least the reasons discussed above. Accordingly, Applicant incorporates its arguments from above.

Furthermore, with regard to the Examiner's reliance on Curcio, Applicant respectfully submits that Curcio is *not prior art* to the present application under 35 U.S.C. §103(a) because Curcio and the present application were commonly owned at the time of the invention by the Nokia Corporation. 35 U.S.C. 103(c)(1) states:

> "Subject matter developed by another person, which <u>qualifies as prior art only under one or more of subsections (e)</u>, (f), and (g) of section 102 of this title, <u>shall not preclude patentability</u> under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or <u>subject to an obligation of assignment to the same person</u>." (Emphasis added).

Curcio published on August 18, 2005 and Applicant's effective filing data is March 29, 2004. As a result, Curcio qualifies as prior art only under subsection (e) of section 102. Furthermore, as indicated on Reel/Frame 015578/0298, the present application was assigned to the Nokia Corporation in July of 2004. As indicated on Reel/Frame 014801/0158, Curcio was assigned to the Nokia Corporation in June of 2004. Accordingly, there is a statement on the record that Curcio and the present application were commonly owned at the time of invention. Thus, the Curcio reference is not prior art to the present application.

Additionally, Applicant submits that even if Curcio were prior art, the asserted combination would still be improper because Klien teaches a cyclical pattern wherein, if a receiver misses data, the receiver listens to the next cycle of the transmission to obtain the missed data. (*See, e.g.*, col. 2, lines 30-33, col. 3 lines 3-8, and col. 6, lines 20-24). Accordingly, there would have been no motivation to modify the teachings of Klien to use point-to-point repair to repair errors, since the cyclical transmission pattern of Klien addresses this issue. Moreover, Klien indicates that a benefit of Klien's teachings is that the method and

system are able to distribute file data by simply putting the metadata and file data on respective channels without requiring "prior knowledge of the number of clients or their locations on a network." (Col 2, lines 16-17). Applicant submits that if Klien were modified in the manner proposed by the Examiner, the distributor would have to have knowledge of clients and locations, thereby contradicting the benefit discussed in Klein.

Still further, with respect to claims 15 and 58, the Examiner correctly recognized Klien, Christensen, and Curcio, alone and in combination, fail to teach or suggest that the "receivers are restricted such that they can request metadata but not content via point-to-point repair." However, the Examiner asserted that Rahman cures this deficiency, and it would have been obvious to one of ordinary skill in the art to include such a feature in the combination of Klien, Christensen, and Curcio. Applicant respectfully disagrees. Although, Rahman does discuss that "the client receiver 214 sends a request for the metadata to the database 222 using the IP address, port and UUID stored in the memory," (*see*, col. 6, lines 29-31) Rahman fails to teach or even suggest that the receivers are *restricted* such that they can request metadata but not content via point-to-point repair. In particular, Applicant submits that sending a request for metadata is not the same as being "restricted" to only receiving metadata.

As to claims 16, 45, and 59, Applicant incorporates its arguments from above with regard to claims 15 and 58. Specifically, Applicant submits that the combination of Klien and Christensen is improper, Curcio is not prior art, and neither Curcio nor Rahman read on the features which they are asserted to read on.

In addition, Applicant also submits that Rahman does not properly read on a "sender… restricted such that it can send metadata but not content via point-to-point repair," as asserted by the Examiner. Rahman discloses that a "database 222 transmits the metadata to the client receiver by way of the optional IP data link." (*See*, col. 6, lines 36-38). However, similar to above, Rahman fails to teach or even suggest that the sender is *restricted* such that it can send metadata but not content via point-to-point repair. Applicant respectfully submits that sending metadata is not the same as being "restricted" to only sending metadata.

With respect to claims 30 and 31, Applicant incorporates its arguments from above with regard to claims 15, 16, 45, 58, and 59, since claims 30 and 31 are directed to a system that includes features related to the receiver recited in claims 15 and 58 and the sender recited in claims 16, 45, and 59.

Claims 12, 27, 42, and 55 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Klien in view of Christensen and further in view of Curcio. Claims 6 and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Klien in view of Christensen and further in view of a document entitled "RFC 3452" to Luby et al. (Luby). Claims 8, 23, 38, and 51 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Klien in view of Christensen and further in view of Rahman. Claims 9, 10, 24, 24, 25, 39, 40, 52, and 53 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Klien in view of Christensen in view of Rahman and further in view of a document entitled "RFC 2327" to Handley et al. (Handley).

Applicant notes that these remaining cited references were directed to specific limitations recited in the remaining dependent claims of the present application. However, each of these dependent claim include at least one of the deficiencies discussed above with regard to the independent claims and Applicant submits that none of these remaining cited references cure the deficiencies discussed above.

Because none of the references cited by the Examiner, either separately or in combination with each other, teaches or suggests all of the features recited in independent claims 1, 13, 15-17, 19, 28, 30-32, 34, 43, 45, 46, 56, and 58-60, Applicant submits that independent claims 1, 13, 15-17, 19, 28, 30-32, 34, 43, 45, 46, 56, and 58-60 are patentable over these cited references. Furthermore, because dependent claims 2-12, 14, 18, 20-27, 29, 33, 35-42, 44, 47-55, 57, and 61 are each directly or indirectly dependent upon independent claims 1, 13, 15-17, 19, 28, 30-32, 34, 43, 45, 46, 56, and 58-60, Applicant submits that each of these claims are allowable for at least the same reasons discussed above, in addition to their own reasons which Applicant reserves the right to argue at a later time if necessary.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date: October 29, 2008   By   /G. Peter Albert, Jr./

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